APPENDIX A

U.S. Department of Justice
Washington, D.C. 20530

EMS:LRW
60-384-168

24 Aug 1983

Washington Utilities and Transportation Commission
Highways-Licenses Building
Olympia, Washington 98504

To the Commission:

On April 11, 1983, the Fifth Circuit Court of Appeals (sitting *en banc*) held that the collective ratemaking activities of three motor carrier rate bureaus constituted a *per se* violation of Section 1 of the Sherman Act. The court specifically held that the state action exception to the antitrust laws was not available to the rate bureaus because they were not compelled by the states in which they operated to engage in collective ratemaking. *United States* v. *Southern Motor Carriers Rate Conference*, No. 79-3741 (5th Cir. Unit B, April 11, 1983).

We are interested in ascertaining the identity of states in which such rate bureaus operate and the precise nature of their activities. It has come to our attention that such organizations may operate in Washington and may engage in activities similar to those pursued by the defendants in the *Southern Motor Carriers* case. In order to implement our law enforcement responsibilities, we are interested in learning the nature and extent of Washington state statutes and regulations that govern or relate to rate bureau activity. Accordingly, we would be very grateful for your response to the attached questions, together with the provision of any relevant supporting documents. We would hope to have your reply by September 21, 1983. If you believe information in addition to that requested would be helpful, please provide it.

If you have any questions concerning this letter, please call Ms. Rangeley Wallace, an attorney in the Transportation Section of the Antitrust Division at (202) 724-6655. Thank you for your attention to this matter.

Sincerely,
/s/ Elliott M. Seiden
ELLIOTT M. SEIDEN
Chief
Transportation Section
Antitrust Division

Enclosure

SCHEDULE OF DOCUMENTS AND INFORMATION REQUESTED

Please provide answers to the following questions and supporting documentation where requested or where you believe it would be helpful.

1. State whether any state statute, order, opinion or regulation compels, authorizes or allows surface common carriers of passengers or freight to collectively establish rates. Provide copies of all relevant regulations, orders, opinions or statutes.

2. State whether any or all common carriers are required to establish rates collectively to operate in Washington. If so, state whether any modes of transportation are exempt from the requirement for collective ratemaking. Provide copies of all relevant regulations, orders, opinions or statutes.

3. State whether any state statute, order, opinion or regulation compels or requires that all rates charged by carriers offering similar or identical services be uniform. Provide copies of relevant statutes, orders, opinions or regulations.

4. State whether a carrier that belongs to a rate bureau * may exercise a right of independent action. If so, describe how and at what stage during the ratemaking process such action may be taken. State whether there are any circumstances in which firms are prohibited from exercising a right of independent action. State whether a carrier or the rate bureau must give advance notice to other carriers of a carrier's intention to take independent action. Explain whether an individual carrier may petition the commission to authorize a rate other than

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* We are interested not only in corporate rate bureaus, but also in any group or association which is composed of two or more competing carriers and which engages in collective ratemaking. The term "rate" is meant to include all fares, rates and charges for the transportation of passengers, baggage or property and for all services rendered in connection therewith.

that proposed by the bureau. State whether rate bureaus have the right to protest, over-rule or cancel a member carrier's independent action. State whether the commission has the power to disapprove an independent action. If so, state whether the commission has ever rejected the rates filed in an independent action, and how often. Provide copies of any regulations, orders, opinions or statutes relating to the right of independent action.

5. State whether a carrier may otherwise exempt itself from a collectively determined rate. State whether a carrier may file a tariff independently of the rate bureau structure. If so, describe the circumstances and provide copies of any relevant regulations, orders, opinions or statutes.

6. State whether rate bureaus are allowed to submit a rate (or rates) on behalf of an individual carrier. If so, describe the circumstances. State whether rate bureau members are allowed to file selective (or specific) rate changes which supplement the collectively determined rate. If so, describe instances in which this has occurred and provide copies of any relevant statute, order, opinion or regulation. State whether rates proposed by rate bureaus are always the result of collective ratemaking.

7. State whether participating carriers are required to file a collective ratemaking agreement with the commission before they can participate in discussions and collective decisions. If so, describe briefly the requirements for a valid collective ratemaking agreement. State whether a collective ratemaking agreement has ever been disapproved. State whether the commission investigates whether a rate bureau complies with the terms of its ratemaking agreement. If so, state how the Commission proceeds with such an investigation, and briefly describe the reasons for, and the results of, any investigations conducted since 1980.

8. State whether the commission otherwise supervises the activities of rate bureaus. (For example, state whether a commission representative attends ratemaking meetings, and

whether transcripts are made of such meetings.) Provide the number of employees who constitute the commission's rate staff. Provide copies of any statutes, orders, opinions or regulations which relate to commission supervision of rate bureau activities.

9. State whether the rates established or proposed by rate bureaus become effective automatically. State whether the commission holds hearings on the rates, and if so, under what circumstances. Explain to what extent the commission is involved in evaluating the reasonableness of rates filed by rate bureaus, and whether a rate bureau is required to submit data or studies in support of a rate change. State what data or studies are required. Describe how frequently the commission refuses or rejects rates filed by rate bureaus. Provide the number of proposals reviewed and rejected since 1980. Provide also the number of proposals automatically accepted without review since 1980 and, of those reviewed, the number that are general rate increases.

10. To the extent not provided in response to other questions, provide copies of any rules, regulations, opinions or statutes pertaining to the establishment, operation, or regulation of rate bureaus.

11. To the extent not provided in response to other questions, provide copies of any rules, regulations, opinions or statutes pertaining to collective ratemaking.

12. Provide a list of all rate bureaus setting intrastate rates that have operated in Washington since 1980 and a general description of each bureau. Include in the general description the type of transportation service or services offered by the member firms, the number of members, the rate bureau's address and yearly revenue, the amount of tonnage transported intrastate and the number of ton miles traveled by rate bureau members. State whether the rate bureau members also engage in interstate commerce and whether the rate bureau has ICC approval.